Kaliappan a/l Ramasamy v Pengerusi, Lembaga Pencegahan Jenayah & Ors

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO R-01(A)-282–08 OF 2015
VERNON ONG, ZAMANI A RAHIM AND ZALEHA YUSOF JJCA
16 FEBRUARY 2017

Civil Procedure — Judicial review — Appeal against — First respondent made order for police supervision against appellant under s 15 of the Prevention of Crime Act 1959 ('the Act') — High Court dismissed appellant's application for judicial review against first respondent's order — Whether there was defective registration of appellant's name and breach of ss 12 and 10(3)(b) of the Act — Whether there was procedural non-compliance by respondents — Prevention of Crime Act 1959 ss 10, 12 & 15

The first respondent had made an order for police supervision ('the order') against the appellant pursuant to s 15 of the Prevention of Crime Act 1959 ('the Act'). Under the order, the appellant was placed under police supervision for a period of three years and was required to reside within Mukim Beseri, Daerah Perlis, Negeri Perlis. The appellant's application for judicial review against the order was dismissed, hence the present appeal. The issue for court's consideration was whether there was defective registration of the appellant's name and breach of ss 12 and 10(3)(b) of the Act.

Held, affirming the decision of the High Court and dismissing the appeal with costs of RM5,000:

(1) Section 10(3) of the Act will come into play only when the finding falls under s 10(1) of the Act. In the present case, the inquiry officer was satisfied that there were reasonable grounds to believe that the appellant was a member of a registrable category. Hence, his finding fell under s 10(2) of the Act. Therefore, s 10(3) of the Act was not applicable in the instant case and the issue of defective registration of the appellant's name did not hold water (see paras 10 & 12).

(2) There was evidence that the inquiry officer had reported his finding to the Registrar of Criminals. The above evidence coupled with the fact that there was no request for review by the appellant clearly proved that the provision of s 12 of the Act had also been complied with by the respondents. In conclusion, there was no procedural non-compliance on the part of the respondents (see paras 13 & 15–16).

[Bahasa Malaysia summary

Responden pertama telah membuat perintah untuk pengawasan polis ('perintah tersebut') terhadap perayu berikutan s 15 Akta Pencegahan Jenayah 1959 ('Akta'). Di bawah perintah tersebut, perayu diletakkan di bawah pengawasan polis untuk selama tiga tahun dan dikehendaki untuk tinggal dalam Mukim Beseri, Daerah Perlis, Negeri Perlis. Permohonan perayu untuk semakan kehakiman terhadap perintah ditolak, maka rayuan ini. Isu untuk pertimbangan mahkamah adalah sama ada terdapat pendaftaran cacat nama perayu dan pelanggaran ss 12 dan 10(3)(b) Akta.

Diputuskan, mengesahkan keputusan Mahkamah Tinggi dan menolak rayuan dengan kos sebanyak RM5,000:

(1) Seksyen 10(3) Akta akan terpakai apabila dapatan terangkum di bawah s 10(1) Akta. Dalam kes ini, pegawai penyiasat berpuas hati bahawa terdapat alasan yang munasabah untuk mempercayai bahawa perayu adalah ahli kategori yang boleh didaftar. Maka, dapatannya terangkum di bawah s 10(2) Akta. Oleh itu, s 10(3) Akta tidak terpakai dalam kes ini dan isu pendaftaran cacat nama perayu adalah tidak munasabah (lihat perenggan 10 & 12).

(2) Terdapat keterangan bahawa pegawai penyiasat telah melaporkan dapatannya kepada pendaftar jenayah. Keterangan di atas bersama dengan fakta bahawa tidak terdapat permintaan untuk semakan oleh perayu jelas membuktikan bahawa peruntukan s 12 Akta juga telah dipatuhi oleh responden-responden. Kesimpulannya, tidak terdapat ketidakpatuhan prosedur oleh pihak responden-responden (lihat perenggan 13 & 15–16).]

Notes

For cases on appeal against judicial review, see 2(3) *Mallal's Digest* (5th Ed, 2017 Reissue) paras 5933–5935.

Cases referred to

Hanizam Hassan lwn Pengerusi Lembaga Pencegahan Jenayah & Yang Lain [2015] MLJU 2311; [2015] 5 CLJ 223, HC (refd)

Legislation referred to

Prevention of Crime (Advisory Board Procedure) Regulations 2014 Form I
Prevention of Crime Act 1959 ss 10, 10(1), (2), (3), (3)(b), 11(1), 12, 15, 15A, Parts III, IV, IVA, First Schedule

Appeal from: Application For Judicial Review No 25–05–10 of 2014 (High Court, Kangar)

V Shanmugam (Visnuvarman with him) (Chambers of Visnu) for the appellants.

Sofiah bt Mohmad Sopah (Munirah bt Muhamed Padzil with her) (Legal Advisor, Perlis State Legal Advisor Office) for the respondents.

Zaleha Yusof JCA:

[1] This is an appeal against the decision of the High Court of Malaya at Kangar dismissing the appellant's application for judicial review for an order of certiorari to quash the first respondent's order for police supervision made against the appellant pursuant to s 15 of the Prevention of Crime Act 1959 ('Act 297'). The supervision order was dated 15 August 2014 in which the appellant was placed under police supervision for a period of three years and was required to reside within Mukim Beseri, Daerah Perlis, Negeri Perlis.

ISSUE

[2] At the outset of the hearing of the appeal, learned counsel for the appellant informed the court that although there were eight issues in their written submission, the appellant would only raise the main issue before this court ie defective registration of the appellant's name and breach of ss 12 and 10(3)(b) of Act 297.

SUBMISSION OF THE PARTIES

[3] Learned counsel for the appellant submitted that s 10(3)(b) of Act 297 clearly states that once the Prevention of Crime Board ('the board') is satisfied with the finding of the inquiry officer, then action will be taken by the board under Parts III, IV and IVA of Act 297. Part III deals with registration of person believed to be member of any of the registrable category.

[4] In this instant case, it was submitted by learned counsel for the appellant, there was evidence that the appellant's name was registered on 6 August 2014; whereas the board was only convened and confirmed the finding of the inquiry officer on 15 August 2014. Hence he further submitted, there was non-compliance of procedural requirement within the meaning of s 15 of Act 297. He found support in the decision of the High Court at Kangar in *Hanizam Hassan lwn Pengerusi Lembaga Pencegahan Jenayah & Yang Lain* [2015] MLJU 2311; [2015] 5 CLJ 223 which, inter alia, held that a registration under Part III will only be made after the board confirms the finding of the inquiry officer under s 10(3)(b) of Act 297.

[5] Learned senior federal counsel for the respondent argued that in this instant case, s 10(3)(b) was not applicable but s 10(2) was, as there was evidence to show that the inquiry officer was satisfied that there were reasonable grounds for believing that the appellant was a member of any of the registrable

categories listed in the First Schedule of Act 297. She also brought to this court's attention that the Court of Appeal, on 3 August 2015 in Civil Appeal No R-01(A)-123–04 of 2015, the appeal against the decision of the High Court in *Hanizam* case, had agreed with the senior federal counsel's argument that *Hanizam* case fell under s 10(2) and not s 10(3)(b) of Act 297. Hence the reliance of learned counsel for the appellant on the High Court decision in *Hanizam* case, was misconceived.

THE DECISION OF THIS COURT

[6] First, for the purpose of understanding this appeal, we shall enumerate the relevant provisions of Act 297 as follows:

10 Report of Inquiry Officer

(1) If the Inquiry Officer is satisfied that there are no sufficient grounds of believing that the person who was the subject of the inquiry is a member of any of the registrable categories, he shall report his finding, together with his reasons for it, to the Board, and shall forward a copy of his finding to the officer having custody of the person, who shall forthwith serve a copy of the finding of the Inquiry Officer on that person.

(2) If the Inquiry Officer is satisfied that there are reasonable grounds for believing that the person who was the subject of the inquiry is a member of any of the registrable categories, he shall report the grounds, together with his finding, to the Board, and shall forward a copy of his finding to the officer having custody of the person, who shall forthwith serve a copy of the finding of the Inquiry Officer on that person.

(3) Whenever the Board, after considering the finding of the Inquiry Officer submitted under subsection (1) is satisfied with respect to any person that —

(a) there are no sufficient grounds for believing that the person is a member of any of the registrable categories, the Board shall forthwith direct any person having the custody of that person, within twenty-four hours from the receipt of the direction, to produce the person before a Sessions Court Judge, who shall thereupon discharge the order of remand made under section 4 and, if there are no other grounds on which the person is lawfully detained, shall order his immediate release;

(b) based on the Inquiry Officer's finding there are sufficient grounds for believing that the person is a member of any of the registrable categories, the Board shall proceed in accordance with Parts III, IV and IVA of this Act.

(4) It the Board makes a decision under paragraph (3)(b), it shall forward a copy of its decision to the officer having custody of the person, who shall forthwith serve a copy of the decision of the Board on that person.

11 Review by the Board of decision of Inquiry Officer

(1) Any person who was the subject of an inquiry who is dissatisfied with any finding made under subsection 10(2) or decision under paragraph 10(3)(b) may, within fourteen days of the service thereunder of the copy of the finding or decision on him, by notice in writing, request the Board to review the finding or decision.

12 Registration of persons believed to be members of any of the registrable categories

(1) The Registrar shall keep a Register for the purposes of this Act, in which shall be entered the name of every person —

(a) who is reported by an Inquiry Officer to be a person in respect of whom there are reasonable grounds for believing that he is a member of any of the registrable categories; and

(b) who has not requested any review under section 11, or in respect of whom the Board has confirmed the finding made under subsection 10(2) or made or confirmed the decision under paragraph 10(3)(b),
together with such other particulars as may be prescribed.

(2) The Board may, if it considers it in the interest of public order or security to do so, with or without inquiry under this Act direct the Registrar to enter in the Register the name, and such other particulars as may be prescribed, of any person who is a member of any of the registrable categories prescribed in Part II of the First Schedule.

15 Police supervision

(1) The Board may by order direct that any registered person named in the order shall be subject to the supervision of the police for any period not exceeding five years, if the Board is satisfied that it is necessary that control and supervision be exercised over the registered person but that it is not necessary to detain him and may renew any such order for a further period not exceeding five years at a time; and the registered person shall be conveyed under police escort to the State, district, mukim, town or village in which he is required to reside under subsection (2), if any.

15A Judicial review of act or decision of Board

(1) There shall be no judicial review in any court of, and no court shall have or exercise any jurisdiction in respect of, any act done or finding or decision made by the Board in the exercise of its discretionary power in accordance with this Act, except in regard to any question on compliance with any procedural requirement in this Act governing such act or decision.

(2) In this Act, 'judicial review' includes proceedings instituted by way of —

(a) an application for any of the prerogative orders of *mandamus,* prohibition and *certiorari;*

A

(b) an application for a declaration or an injunction; or

(c) any other suit, action or other legal proceedings relating to or arising out of any act done or decision made by the Board in accordance with this Act.

B

[7] Section 15A of Act 297 clearly stipulates that there shall be no judicial review in any court in respect of any decision made by the board except in regards to any question on compliance of any procedural requirement in the Act governing such decision. Hence, as agreed by learned counsel for the appellant, this court would only look at whether there was any procedural non-compliance on the part of the board in making its decision which is being appealed against by the appellant.

C

[8] We had scrutinised the appeal records and considered the submissions made by the parties. We found that there was evidence to show that the appellant was served with a copy of the inquiry report on 23 July 2014 (see p 283 of the appeal record) and he signed Form I, made under s 11(1) of Act 297, on the same day, to notify that he did not wish to review the inquiry finding.

D

E

[9] Having scrutinised s 10 of Act 297, we were of the view that the finding of the inquiry officer under s 10 can be divided into two categories ie:

(a) where the inquiry officer is satisfied that there are *no sufficient grounds* for believing that the person who was the subject of the inquiry is a member of any of the registrable categories; and

F

(b) where the inquiry officer is satisfied that there are *reasonable grounds* for believing that the person who was the subject of the inquiry is a member of any of the registrable categories.

G

[10] Section 10(3) of Act 297 in our considered view will come into play only when the finding falls under s 10(1). It is very obvious as s 10(3) says 'whenever the Board, after considering the finding of the Inquiry Officer submitted *under subsection (1)*, ...'.

H

[11] The issue of which provision was applicable could be answered by going through the documentary evidence. We found the inquiry officer in his affidavit as shown at p 104 of the appeal record had stated as follows:

I

> 6. Setelah mendengar dan menimbangkan keterangan-keterangan yang dikemukakan oleh Pemohon, *saya telah mendapati dan berpuas hati bahawa ada alasan-alasan yang munasabah bagi mempercayai bahawa Pemohon ialah anggota kepada pertubuhan yang menyalahi undang-undang ... yang termasuk dalam Kategori Yang Boleh Didaftarkan, di bawah Perenggan 1(i), Bahagian I, Jadual Pertama, Akta Pencegahan Jenayah 1959.*

[12] The caption above clearly shows that the inquiry officer was satisfied that there were *reasonable grounds* to believe that the appellant was a member of a registrable category. Hence we found his finding fell under s 10(2) of Act 297. We therefore agreed with learned senior federal counsel that s 10(3) of Act 297 was not applicable in the instant case. Hence the issue of defective registration of the appellant's name since it was registered before the board convened, in our view did not hold water. Further it had not been disputed by learned counsel for the appellant that the decision of the High Court in *Hanizam* case which was relied upon by the appellant, on appeal, had been overturned by the Court of Appeal.

[13] We also found there was evidence that the inquiry officer had reported his finding to the Registrar of Criminals ('registrar'). This could be seen at para 12 of his affidavit at pp 105–106 of the appeal record as follows:

> 12. Pada 06-08 2014, saya telah memaklumkan kepada Pendaftar Penjenayah iaitu SUPERINTENDAN POLIS MOHAMMAD AZLIN BIN SADARI (G/12708) bahawa mempunyai sebab-sebab yang munasabah untuk mempercayai bahawa Pemohon adalah orang termasuk di dalam kategori yang boleh didaftarkan dan nama Pemohon adalah merupakan orang perlu didaftarkan memandangkan Pemohon tidak memohon sebarang kajian semula di bawah seksyen 11 Akta tersebut.

[14] Superintendent Police Muhammad Azlin bin Sadari was the registrar at the material time. In his affidavit at paras 4–5, at pp 79–80 of the appeal record Superintendent Muhammad Azlin had stated as follows:

> 4. Pada 06.08.2014, Pegawai Inkuiri iaitu Lee Wai Yi telah memaklumkan kepada saya bahawa Pemohon telah dilaporkan sebgai orang yang termasuk di dalam kategori yang boleh didaftarkan yang mana Pemohon tidak memohon sebarang kajian semula di bawah seksyen 11 Akta tersebut dan nama Pemohon adalah merupakan orang perlu didaftarkan selaras dengan seksyen 12(1) Akta tersebut.
>
> 5. Pada 06.08.2014 saya telah mendaftarkan nama Pemohon di dalam Daftar dan saya kemudiannya telah memaklumkan kepada Pegawai Inkuiri iaitu Lee Wai Yi bahawa nama Pemohon telah didaftarkan di dalam Daftar oleh saya pada tarikh yang sama.

[15] The above evidence coupled with the fact that there was no request for review by the appellant clearly proved that the provision of s 12 of Act 297 had also been complied with by the respondents.

CONCLUSION

[16] For the above reasons, we found there was no procedural non-compliance on the part of the respondents. We must also emphasise, since

learned counsel for the appellant at the outset of the hearing of this appeal had stated that they would raise only the main issue, ie on the defective registration of the appellant's name and breach of ss 12 and 10(3)(b) of Act 297, we found it was not necessary to consider other issues. We decided that the main issue was sufficient to dispose of this appeal.

[17] In the result, the decision of the High Court was affirmed and this appeal was dismissed with cost of RM5,000.

Decision of High Court affirmed; appeal dismissed with costs of RM5,000.

Reported by Dzulqarnain Ab Fatar